IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

(1) S.B.Civil Writ Petition No. 2067/2007
Jodhpur City Bus Owners Union vs. The State of Raj. & ors. & anr.

(2) S.B.Civil Writ Petition No.2390/07
Chiman Singh & anr. vs. The State of Raj. & ors.

(3) S.B. Civil Writ Petition No.3537/2007
Tikam Chand Kothari & ors. vs. The State of Raj. & ors.

(4) S.B. Civil Writ Petition No.3896/2007
Bansi Lal Lohar vs. The State of Raj. & ors.

under Article 226 of the Constitution of India.

Date of Judgment: August 30th ,2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Girish Joshi for the petitioners
Mr. B.P. Bohra for the petitioner in SBCW No.3896/07.
Mr. N.M. Lodha, AAG. for the State.
Mr. B.L. Maheshwari for the respondents.
Mr. B.L. Tinwari for respondent no.5 in SBCW No.3537/07
Mr. V.K. Mathur for respondent no.6 in SBCW No.3537/07

BY THE COURT:

REPORTABLE

The State Government opened various routes for plying buses of Rapid Transport System vide notification dated 4.11.2006.The State Government further vide another notification dated

12.12.2006 granted approval of the State Government for implementation of Bus Rapid Transport System (for short BRTS) in the cities of Udaipur, Jodhpur and Kota in Rajasthan. By the same order dated 12.12.2006, the State further granted approval for constitution of Special Bus Vehicles (SPV)- a city level transport company for each of the above cities with the names (1) "Udaipur City Transport Services Limited" for the city of Udaipur, (2) "Jodhpur City Transport Services Limited" for the city of Jodhpur and (3) "Kota City Transport Services Limited" for the city of Kota. The above four writ petitions have been filed to challenge these notifications opening routes for BRTS and against the grant of approval for implementation of BRTS as well as against grant of approval for constitution of companies mentioned above for the area of Jodhpur and Udaipur cities.

The S.B.Civil Writ Petition No.2067/07 has been filed by the Jodhpur City Bus Owners Union through its authorised representative of said Union and by one Chetan Singh, who has been impleaded in the writ petition as petitioner in his individual capacity on the ground that his fundamental rights are violated by

the above action of the State. In this writ petition which was filed before any permit was granted by the respondent-Transport Authority to respondents no.6 or 7, therefore, the permits which were granted in favour of respondent no.7 subsequent to the filing of the above writ petition, have not been challenged and only relief of prohibition against grant of permit has been sought.

Another S.B.Civil Writ Petition No.2390/07 has been filed by Chiman Singh and Arjun Parihar for the same reliefs as claimed in above S.B.Civil Writ Petition No.2067/07 but with challenge to orders granting permits to Mahadev Travels(respondent).

S.B.Civil Writ Petition No.3537/07 has been filed by Udaipur Kendriya Auto Tempo Sharmik Union and one Tikam Chand Kothari who is permit holder and is plying stage carriage vehicle on the route no.2 in the city of . On the basis of same facts and grounds as in identical above two writ petitions No.2067/07 and No.2390/07, the petitioners have challenged the orders dated 27.10.2007, 23.5.2007 and 7.5.2007 as well as permits granted to respondent no.6-U.N. Speedways Pvt. Ltd. dated 16.4.2007 and 7.5.2007. These orders and permits are for the route opened in city of

Udaipur.

By the Writ Petition No.3896/07, the petitioner Bansi Lal, the permit holder of stage carriage vehicle on the route in Udaipur City, has challenged the orders of the State Government dated 27.10.2006 and 23.5.2007 as well as the permit granted to respondent no.6- U.N. Speedways Pvt. Ltd. dated 16.4.2006 and 7.5.2007. S.B.Civil Writ Petitions No.3537/07 and 3896/07, are therefore, for challenging the same orders of the State Government, by which the routes were opened by the orders of the State Government in the city of Udaipur and grant of permit over the above routes.

Meaning thereby in all the four writ petitions, the challenge is to the decision of the State Government of opening various routes under BRTS and grant of permits for the routes opened under BRTS as well as against the approval of implementation of BRTS and constitution of above three companies and, therefore, all these writ petitions were heard together and are being decided of by this common judgment.

The petitioners' contention in all these writ petitions are that

the State Government by order dated 12.12.2006, granted approval for implementation of BRTS in the cities of Udiapur, Jodhpur and Kota as well as by the same order granted approval for constitution of Special Purpose Vehicle (SPV)-a city level transport company, for each of the above cities, namely, Udaipur, Jodhpur and Kota. According to the petitioners, though by order dated 12.12.2006, it has not been specifically and expressly conveyed that these companies are State Transport Undertakings as defined under sub-section (42) of Section 2 of the Motor Vehicles Act, 1988 but in fact, they are State Transport Undertakings. According to the petitioners in the State of Rajasthan, there can be only one State Transport Undertaking because of the reason that though the State may have power to constitute State Transport Undertaking or a State Transport undertaking can be constituted by local bodies also under sub-section (42) of Section 2 of the Act of 1988 but the State itself by framing sub-clause (c) of Rule 6.1 in the Rajasthan Motor Vehicles Rules, 1990, restricted its constitution and by rule and declared that only the Rajasthan State Road Transport Corporation shall be the State Transport Undertaking. Clause (c) of Rule 6.1 of

Rules of 1990 provides that State Transport Undertaking means the Rajasthan State Road Transport Corporation established under section 3 of the Road Transport Corporation Act of 1950. In view of the above legal position, the State Government had no power to grant approval for constitution of companies, like the companies referred above, which may provide service of motor vehicle for carrying passengers for hire or reward, unless the rule 6.1(c) is amended.

Another contention of the petitioners is that the State Transport Undertaking can be allowed to provide services only on the area or route for which the scheme has been prepared by the State Government by following procedure under Chapter VI, particularly as provided under Sections 99, 100, 101 and 103 of the Act of 1988. The State Government has not prepared any "scheme" as defined by rule 6.1 (b) of the Rules of 1990 nor declared any area or route to be the area or route under the scheme under Section 99 of the Act of 1988 for the purpose of allowing the State Transport Undertaking to ply their vehicles and to create complete or partial monopoly of said State Transport Undertaking for plying the vehicles in the area or route which may be declared as such area or route under Chapter VI of the Act of 1988. It is also submitted that

“Scheme” is also defined under sub-clause (b) of Rule 6.1 of the Rules of 1990 and “Scheme” means a scheme framed in pursuance of Section 99 of the Act of 1988. How the scheme can be framed is provided under Section 99 of the Act and it gives opportunity to all persons to examine the scheme and submit the objections to the proposals of the Government under Section 100 of the Act of 1988. Once the scheme is approved after observing the requirements of law as provided under sub-section (1) of Section 99 and after considering the objections, as may be submitted under Section 100, the State is required to publish the scheme in the official gazette and further it is required that the scheme shall be published in at least one news-paper in regional language circulating in the area or route covered by such scheme. With the publication of notification in official gazette in newspaper, as per sub-section (3) of Section 100 of the Act of 1988, the scheme becomes the “approved scheme” and the area and the routes under the scheme are called “notified area” or “notified route”. This is the only procedure provided by which monopoly can be created of State Transport Undertaking in the matter of providing service of motor vehicle for

carrying passengers for hire and reward and for rest of the routes, there cannot be any monopoly even for State Transport Undertaking.The State Transport Undertaking is also at par with any private operator when State Transport Undertaking wants to ply their vehicles on the route opened under Chapter V of the Act of 1988. According to the petitioners, there cannot be any monopoly when route is formulated and opened by the State Government under Chapter V. The petitioner or the members of the petitioner, they are having stage carriage permits and are plying their vehicles on the routes which are overlapping on the route opened by various notifications issued by the State Government and which are impugned in all the four writ petitions. Therefore, the State excluded the petitioners and petitioner's members from plying their vehicles on the route in question by creating monopoly of respondent companies.

It is also contended that the BRTS is in fact an scheme, as defined under sub-clause (b) of Rule 6.1 of the Rules of 1990 but the scheme has been declared without following the procedure as provided under Chapter VI and by complying with the requirements

of law as provided under Sections 99 and 100 of the Act of 1988, the State Government by giving name “system” to BRTS, cannot avoid to follow the procedure as provided under Chapter VI of the Act of 1988.

According to the petitioners, the routes in questions were opened though prior to the approval of the State for constitution of the companies but from the notification, opening the route itself, it is clear that the State Government decided to implement the BRTS and opened the route only for the BRTS and, therefore, only the company constituted by the State Government by its approval dated 12.12.2006 alone was likely to get permit to ply their vehicles and, therefore, Jodhpur City Bus Owners Union immediately before grant of permit to any body, preferred S.B.Civil Writ Petition No.2067/07. In other three writ petitions, the permits which were granted to the private respondents, also have been challenged.

The petitioner in these writ petitions submitted that any person who has any financial interest whether as proprietor, employee or otherwise, in any transport undertaking, is not eligible to be appointed and is not entitled to continue as member of the

State or Regional Transport Authority as per sub-section (2) of Section 68 of the Act of1988. Not only this, under sub-section (2) of Section 68 of the Act of 1988, it is clearly provided that even if any person being a member of any State or regional Transport Undertaking, acquires financial interest in any transport undertaking, is required to give notice in writing to the State Government of such interest within four weeks on his acquiring financial interest in transport undertaking and further he is required to vacate the office also. In the present case, the State Government by the same notification dated 12.12.2006 referred above, granted approval of the composition of Board of Directors of the said companies by including the Regional Transport Officers as Member of the Board of Directors. According to the petitioners, the company constituted by the approval of the State dated 12.12.2006 is a transport operator only even if it is a State Transport Undertaking or a company. The above companies are competitors in the routes in questions with other transport operators. The Regional Transport Officer is required to take a quasi judicial decision and pass orders on the applications submitted by the above referred

companies in competition to other operators and, therefore, the Regional Transport Officer could not have been appointed as Member in the Board of Directors of the companies because of simple reason that it may influence his decision in the matter of grant of permits, obviously in favour of the company in which he is one of the Director. In all these writ petitions, the petitioners have neither challenged the appointment of Regional Transport Authority as Director of the companies constituted and approved by the Government by order dated 12.12.2006 and nor have challenged his continuation as Regional Transport Officer. The petitioners in all writ petitions sought only relief that since the Regional Transport Officer is beneficiary of company, therefore, respondent cannot grant permit to respondent-company.

According to the petitioners, after obtaining approval of the State Government by the respondent-Companies, the said companies have issued notice inviting tender (Annex.6) dated 6.1.2007 (respondent-Jodhpur City Transport Services Limited for Jodhpur area) and dated 4.1.2007 (Annex.4) by the Udaipur City Transport Services Limited for Udaipur area. According to the

petitioners, the above two companies also issued Form for inviting expression of interest and offer to operate the city buses in the city of Jodhpur and Udaipur respectively. The copy of the said Form also has been placed on record by the petitioners to show that in this Form, the company conveyed that the company has obtained permits from the Road Transport Authority for the routes which were opened by the State Government under the BRTS. The companies invited operators to operate the city buses on various routes on the basis of the route-wise offers and for which the operator is required to pay the permit fee on monthly basis, therefore, the petitioners, in S.B.Civil Writ Petition NO.2067/07, without delay and without waiting for grant of permit, challenged the action of the respondent; the action of the State for implementation of BRTS(Scheme), granting approval for constitution of the companies which in fact are State Transport Undertakings and against the proposed action of the Transport authorities to grant permits to the companies and granting permit to any of persons who intend to get the permit through the respondent-Companies. However, subsequent to the filing of the S.B.Civil Writ

Petition No.2067/07, since the permits have been granted in the name of the private respondents but with clear intervention of the respondent-companies, therefore, the petitioners have challenged the permits granted to the private respondents for operating their buses on the routes opened by the State Government by various impugned orders, copies of which have been placed on record of all these four writ petitions.

Apart from above grounds, the petitioners have raised issue of public interest and according to the petitioners, the action of the respondents is against the public interest. According to the petitioners, buses which are sought to be allowed on the route formulated by the State vide order dated 4.11.2006 are not fit for running the said buses. It is also stated that in the entire Jodhpur city there exists only 3% of roads on which the buses of such type can ply. According to the petitioners (in writ petition No.2067/2007) there are no appropriate road widths in the route opened where the said buses even can take turn. The petitioner specifically identified the points in Jodhpur City where buses cannot take turn in writ petition pertaining to Jodhpur City and it is

said that the same is the position in Udaipur as well as in entire Rajasthan. Not only this but in city limit, only light motor vehicles can be allowed to run and light motor vehicle has been defined in sub-section (21) of Section 2 of the Act of 1988. As per the definition of light motor vehicle as given in sub-section (21) of Section 2, its weight should not exceed 7500 kgs. (unladen) and petitioners are already plying their vehicles whose gross weight is not exceeding 7500 kgs. and even all the vehicles held by the petitioners' members are of 5300 kgs. only whereas the vehicles sought to be used in BRT System are having weight of 16200 kgs. The learned counsel for the petitioners also pointed out that the respondents in their reply virtually admitted the fact that roads in the city of Jodhpur are not meant for plying the vehicles which are sought to be allowed by opening the routes under the BRT System and, therefore, even the respondent-Company sought certain diversion and modifications in the route opened by the State vide order dated 4.11.2006. The petitioner in reply to the respondent's application for modification of the stay order, submitted that the vehicles in question will be employed in densely populated area

and further if the proposals submitted by the respondent-Company are accepted then that cannot be done as according to the respondents the companies are not the permit holders. The respondent pointed out that at Jodhpur in Fidusar Chopar to Boranada route 17 bus stand stoppages have been shown but in the proposed diversion and extension, 40 bus stoppages have been shown and for Banar to Chopasani there were 13 bus stand stoppages but in the proposed diversion and extension, there are 50 bus stoppages have been shown. For Jogari Nadi Pool to Boranada, originally 44 bus stand stoppages have been shown whereas in the proposed diversion and extension, 52 bus stoppages have been shown and in the same way, in Banar to Fidusar Chopar, it has been increased from 34 to 38, in Chopasani to Ossian there being increased from 29 to 35, In Mandore to Salawas stoppages have been increased from 21 to 26. The buses are required to be stopped at least two minutes on each bus stop. The petitioners, therefore, tried to show that by this, huge time will be consumed only at bus stoppages. The petitioners also raised objection about the speed on which the new vehicles will run. It is also submitted that the

revision in the order opening route has been sought by the respondent-Company, whereas revision, diversion or extension of route can be sought only by the permit holders. The petitioners also submitted that the routes have been increased from 24 kms. whereas as per sub-clause (i) of provision under sub-section (3) of Section 80, it cannot exceed 24 kms. The petitioner also placed on record certain photographs along with his aforesaid reply to respondent's application for modification of order to show that the road width in particular area is very small and the proposed buses having dimension of 9' x 30' will create havoc for the public and will put the life of the citizens in danger. Lastly, the petitioner submitted one more reply which was in response to the respondent's application which was filed to explain the BRT System dated 19.7.2007. In this reply, the petitioner submitted that the respondent wants to implement the UIDSSMT Scheme which according to the petitioner's knowledge means, “Urban Infrastructure Development Scheme for Small, Medium Town. According to the petitioner, before implementing said UIDSSMT Scheme, the State was required to develop the road system in the

cities first but that has not been developed and without making any study and survey and without developing the basic infrastructure, the respondent is implementing the BRT System under the alleged UIDSSMT Scheme and in the light of the facts pleaded by the petitioner, said UIDSSMT Scheme cannot be implemented in the city like Jodhpur, what to say of cities having less population and if these buses will be allowed to run, they will be against the public interest.

The learned counsel for the petitioner in support of his contentions, relied upon several judgments which will be considered at relevant places.

Shri N.M. Lodha, learned Addl. Advocate General appearing for the State has raised preliminary objections against the maintainability of all the four writ petitions. According to Shri Lodha, the writ petition preferred by Jodhpur City Bus Owners Union and another deserves to be dismissed as the Jodhpur City Bus Owners Union neither sought any permit for the route in question nor its members intending to apply for the permit as admitted by the learned counsel for the petitioner, therefore, they are not

aggrieved persons hence have no locus standi to challenge the orders of the State. Further these petitions are not public interest petitions . Not only this, the petitioner tried to mislead this Court by submitting that any objection has been submitted by the petitioner or its members against the implementation of BRT System. The petitioner Jodhpur City Bus Owners Union stated wrong facts that the Jodhpur City Bus Owners Union submitted their objection/representation on 9.11.2006 and copy of which has been placed on record as Annex.5. The said representation was submitted not by or on behalf on the petitioner Association or its members but was submitted by the Central City Bus Owners Association, Jodhpur through its President Hari Singh Arya. Said Hari Singh Arya thereafter himself became the Director of the Jodhpur City Transport Services Ltd. Itself. It is also submitted that in view of the above facts alone, the writ petition of the petitioner deserves to be dismissed. It is also submitted that the petitioner has challenged the order of the State Government dated 4.11.2006 opening the route and for that route, none of the member of the petitioner is seeking any permit to ply buses then they cannot be

said to be aggrieved persons against the order dated 4.11.2006 (Annex.4). It is also submitted that the writ petition to challenge the order dated 12.12.2006 is not maintainable in view of the fact that that was administrative order effecting no body and the petitioners failed to show any reason for their grievance against the constitution of Company or grant of approval by the State Government of the constitution of Company. It is also submitted that the petitioner sought relief against the respondent- JCTS Pvt. Ltd. and U.N. Speedways Pvt. Ltd. on the ground that the monopoly has been created for these companies for the route formulated by order dated 4.11.2006, whereas said companies have neither applied nor have been granted any permit to ply any bus over the routes in question. Therefore also, the writ petitions of the petitioners are without any basis.

It is also submitted that the petitioner has raised several disputed questions of fact that their exists no appropriate road and infrastructure on which the buses proposed to be allowed on the route can ply. The petitioner has not placed on record any expert opinion to prove this fact, therefore, the disputed question

of fact cannot be determined by this Court in writ jurisdiction about the availability of appropriate road and infrastructure for the route in question and the averments have been made without there being any factual foundation in the writ petitions.

Further it is submitted that the members of the petitioner-Union are already plying their buses on the various routes opened by the order of the State Government and some buses are plying on the route in question as the routes of the members of the petitioner-Union are overlapping on the routes in question, therefore, the writ petitions are not for the public interest but have been filed for personal gain.

Another preliminary objection is that the opening of route by order dated 4.11.2006, the approval of the State Government for constitution of Company dated 12.12.2006, the constitution of the Company itself by getting it registered under the Companies Act, allowing the Regional Transport Authority to become the Director in the Company, are separate and independent matters and may give rise to entirely distinct, separate and unconnected causes of action and all those causes of actions cannot be joined together and,

therefore, the writ petition of the petitioner suffers from error of misjoinder of causes of action. The petitioner also joined two causes of action, one for their own benefit and another of alleged public interest and two cannot go together in one writ petition. There cannot be question of public interest when the petitioners themselves says that they themselves are adversely affected in business competition by the action of the respondent, therefore, the petitioner cannot take a plea of public interest in the writ petition filed for their own gain.

On merit, Shri N.M. Lodha, learned Addl. Advocate General, Shri B.L. Maheshwari, Shri V.K. Mathur and Shri B.L. Tiwari, vehemently submitted that the writ petitions have been filed on the basis of some wrong assumption drawn by the petitioners. According to the learned counsels for the respondents, the State never constituted any State Transport Undertaking nor respondent no.6 is JCTSL or U.N.Speedways Pvt.Ltd. is a State Transport Undertaking. The petitioners by misleading and misinterpreting all the documents referred in their writ petitions itself, assumed that the respondent-Companies are State Transport Undertaking despite

having full knowledge that only service provider companies are constituted by the local bodies for their cities with the approval of the State by order dated 12.12.2006. Petitioners deliberately, to mislead this Court, submitted that the said JCTSL and U.N. Speedways Pvt. Ltd. are intending to to get the permit to ply their vehicles on the route opened by the order of the State Government dated 4.11.2006. From the petitioner's own document, the form for inviting expression of interest and offer, to operate the city buses in Jodhpur city issued by the JCTSL, it is clear that the State Government gave approval for constitution of the Company with clear condition that the Company will not own buses and will not be having any fixed liability. In Condition No.9, in clause (9) it has been clearly provided that the Company will not operate any buses nor run any service itself. According to learned counsel Shri N.M. Lodha, an undertaking providing road transport services if is carried on by (i) Central or State Government, (ii) or by any Road Transport corporation established under Section 3 of Road Transport Corporation Act, 1950, (iii) or by Municipality or corporation,(iv) or by Company owned or controlled by Central Government and/or

State Government and (v) or by Zila Parishad or local Authority can be State Transport Undertaking. Emphatically it was submitted that if road transport service is provided by any Company then if Company is owned or controlled by the Central Government or by the State Government or by the Central Government and State Government both or by State Governments then only such Company providing road transport services is State Transport Undertaking. In this case, the Companies are neither the Companies owned by the controlled by State Government nor by the Central Government and the companies are not providing road transport service, therefore, also the companies are not the State Transport Undertaking.

The learned Addl. Advocate General Shri N.M. Lodha further submitted that the petitioner though pointed out sub-clause (c) of rule 6.1 of Rajasthan Motor Vehicles Rules, 1990 but despite knowing that in the State of Rajasthan, there is a Rajasthan State Road Transport Corporation established under Section 3 of the Road Transport Corporation Act 1950 alone is State Transport Undertaking, wrongly submitted that by constituting JCTSL or other

company , any State Transport Undertaking has been constituted by the State. According to the learned counsel for the respondents, the petitioners' contention that the State Transport Undertaking can be as per sub-clause (c) of rule 6.1 of the Rules of 1990, is correct and at the same time, the self-destructive argument of the petitioners is that the JCTSL or U.N. Speedways Pvt. Ltd. are State Transport Undertakings. In view of the above, the very foundation for filing the writ petition is wrong fact and the writ petitions of the petitioners deserve to be dismissed because of the reason that the petitioners entire foundation in the writ petitions is that the said companies are State Transport Undertakings which is factually and legally wrong and further the petitions have been filed under wrong assumption that the said Company shall be providing road transport services by obtaining permit for the routes in questions.

Since there is no creation of State Transport Undertaking nor any scheme under Section 99 has been framed nor monopoly rights have been given to any operator including companies in question, therefore, their arises no question of application of Chapter VI of the Motor Vehicles Act, 1988. Chapter VI applies for specific

purpose which is clear from heading of Chapter VI which reads "Spacial provisions relating to State Transport Undertaking". Another basic flaw in the writ petitions is that there is no scheme prepared by the State Government so as to create any partial or complete monopoly in favour of any State Transport Undertaking whereas the petitioners proceed on assumption that by the order dated 4.11.2006 any monopoly has been created for the companies. Shri N.M.Lodha, Addl. Advocate General on behalf of the State Government, made it clear that any person can apply for grant of permit on the route opened by the State Government by order dated 4.11.2006 to run the buses because of the reason that in the best public interest and to implement the policy for gradual improvement in road transport system, it has been decided by the Ministry of Urban Development,Government of India that National Urban Transport Policy, 2006 to encourages public transport to promote urban transport through buses and shifting of private vehicles to modern quality vehicles and for that it is essential that low floor/semi-lowfloor with modern facility and fitted with modern technology quality buses be introduced for intra-city

transport with the help of private participation. In the opinion of even Central Government, such buses will not only help to change the mindset of people about buses but would also help in improving the image of the city. The number of cities have come up with proposals for introduction of Bus Rapid Transit System which as is clear from the communication sent by the Secretary, Ministry of Urban Development, Government of India, New Delhi dated 12.2.2007. The learned counsel for the respondents submitted that improvement is a gradual and regular process and the BRT System has already been employed in various cities particularly in the city Indore in M.P., apart from its implementation and operation in number of cities abroad and, therefore, in public interest, BRT System has been implemented in the three cities of Rajasthan, namely, Jodhpur, Udaipur and Kota. It is also submitted that for providing best available transport vehicles to the public of Jodhpur, Udaipur and Kota, there may be some initial difficulties which includes road conditions at some places not very compatible and upto the level which should have been for using well equipped and sophisticated buses but because of that reason, the larger section

of public cannot be denied the better road transport facilities. It is submitted that there may be, here and there, some narrow way on the route but that is required to be ignored because of the reason that that will not affect the public safety in any manner by controlling the traffic properly on those points. It is submitted that even for the sake of arguments, at some places, the road width is less then for some difficulties for residents of such small area, large number of persons cannot be made to suffer. Not only this, the State may take corrective steps for regulating the vehicles. On this ground the best transport vehicles which avoid the accidents cannot be discarded. It is submitted that even the petitioners can not say that the vehicles sought to be used in this BRT System are not most modern, well equipped, providing best facilities to the passengers travelling in the said BRT System. In that situation, though not admitted but even if there is some difficulties to some one, then in large public interest, those difficulties are required to be ignored. Not only this but in number of cases, it has been held that when it is matter of public interest, then even some illegalities also can be ignored. According to the learned Addl. Advocate General, in

present case, the petitioners' contention is about the inconvenience which may be caused to some of the persons living near some of the spots and routes and the petitioners failed to make out any case of any illegality committed by the respondents.

So far as monopoly in favour of respondent-Company is concerned that ground is factually wrong and monopoly in favour of the persons who can ply a particular type of bus on particular route opened by the State Government by formulating the route under sub-clause (ca) of sub-section (3) of Section 68 of the Act of 1988, is not monopoly because of the reason that putting some restrictions or providing some eligibility criteria is not a creation of monopoly of those persons who fulfills the criteria. The petitioners or other members, any one can apply for the permit to ply vehicle on the route by purchasing the buses of requisite quality. It is submitted that if Companies like respondents provides all infrastructure facilities of smooth running of the buses and their tracking of stoppages then that cannot be said to be providing “services of road transport” itself nor it violates any provisions of the Motor Vehicles Act or the Rules framed thereunder.

The learned counsel for the respondents further submitted that the petitioners were well aware about notice of the JCTSL and U.N.Speedways Pvt. Ltd. inviting tender in the news-paper dated 8.1.2007, copy of which has been placed as Annex 6 in S.B.Civil Writ Petition No.2067/07(and as Annex. 5 in other). From the said notice inviting tender itself, it was made clear that very purpose for incorporating these companies was to offer better civic facilities. The companies made it clear that service level will be duly monitored by GPS based and On Line Bus Tracking System was identified by the Company as a tool to ascertain the service level. The Company made it clear that the Company planed to establish a control room for OLBTS and the buses shall have tracking device with online data transfer facility. The Company also made it clear that by this advantages will be obtained, like knowledge of estimated time of arrival that could be flashed on display screens at various bus stops, Schedule and itinerary adherence, Log of exact kilometer travelled by bus, punctually and improvement in driving pattern, control over unauthorised and unscheduled stoppages, better analysis, migration to passenger, information system

including IVRS etc. From the said notice inviting tenders (Annex.6) itself, it has been made clear that all that is being done is not only in the large public interest but to make the some cities on trial basis in the State of Rajasthan having the worldwide best transport system and, therefore, all has been done in the large public interest and the grievance of the petitioners is clearly motivated and for self-interest.

All the learned counsels appearing for the respondents submitted that when there is no State Transport Undertaking and when the State has not formed any opinion to frame an scheme as required under sub-section(1) of Section 99 and no decision has been taken by the State Government for exclusion of any person completely or partially from operating buses with opened routes then there cannot arise any application of Chapter VI. The route has been opened under Chapter V of the Act of 1988 and which is permissible, rather say, is required to be opened by formulating the route by the State Government. By sub-section (3) of Section 68, the State Government did so by exercising its powers under Chapter V and the petitioner could not make out any case of any

infringement of their rights with the help of provisions under Chapter V of the Act of 1988 of the Rules framed under the Motor Vehicles Act.

The learned counsel appearing for the State submitted that the petitioner has not challenged the appointments of the Regional Transport Authorities as Director in the respondent-Company constituted under the Companies Act. The roll of Regional Transport Authority in the said Company JCTSL is very limited and his interest cannot be said to be a financial interest even in the Company or otherwise. The Regional Transport Officer's appointment as Director or his continuation on the post of Regional Transport Officer since is not under challenge, therefore, the objection raised by the petitioners about presence of Regional Transport Officer as Director in the respondent-Companies or his continuation on the post of R.T.O. cannot be entertained. Otherwise also, as stated above, his appointment is not hit by sub-section (2) of Section 68 of the Act of 1988.

It is vehemently submitted that Hon'ble the Apex Court in the case of Ouseph Mathai and ors. vs. M. Abdul Khadir (2002) 1 SCC

319) held that jurisdiction under Art. 227 cannot be invoked as a matter of right and the petition under Art. 227 cannot be treated like an extension of a statutory appeal or revision. The Hon'ble Supreme Court further held that mere wrong decision is not a ground for exercise of jurisdiction under Art. 227. The High Court may intervene under Art. 227 only where it is established that the lower authority is guilty of grave dereliction of duty and flagrant abuse of power, which has resulted in grave injustice to any party. In this case, according to the learned Addl. Advocate General appearing for the State, it is not the case of the petitioners that the buses are not one of the best buses and will not have latest equipments to track the buses. And in the process of establishing the system of BRTS in the city of Jodhpur, some time may take and some improvement may be done but those improvement can be in phased manner and steps towards improving the BRTS for public benefit cannot be denied denied merely on the ground that some facilities are yet to be provided.

The learned counsel Shri N.M.Lodha appearing for the State also submitted that though in this case route has not been opened

for any State Transport Undertaking but State Transport Undertaking is not precluded to ply its vehicles on the routes opened under Chapter V of the Act of 1988 merely because of the fact that the provision has been made for giving right to the State Transport Undertaking to ply their buses in the scheme area or on the routes or the area formulated or declared under under Chapter VI of the Act of 1988. The State Transport Undertaking can also obtain permit and ply their vehicles on the route. Therefore, if the private respondents applied for the permit on the routes opened under Chapter V and it was granted to the respondents, the State authority has not committed any wrong.

I considered the submissions of the learned counsel for the parties and perused the record.

It appears from the facts mentioned in all the four writ petitions that the petitioners were under impression that the respondent-Company is a State Transport Undertaking as defined under sub-section (42) of Section 2 of the Motor Vehicles Act, 1988. According to the learned counsel for the petitioner, the State Transport Undertaking can be a company owned by the Municipality

or Corporation or owned by any local authority or local authorities. The petitioners' contention is that since the Companies are constituted by the involvement of local Municipal Council/Corporation and the Urban Improvement Trust, therefore, the Companies are owned or controlled and run by the local authority and, therefore, the Companies are covered under clause (iv) of sub-section (42) of Section 2 of the Act of 1988.

The factual as well as legal position is entirely different which is clear from the document placed on record by the petitioners themselves as well as from the bare reading of sub-section (42) of Section 2 of the Act of 1988. The basic requirement for constitution of State Transport Undertaking is that it should provide road transport services. The petitioners placed on record the order of the State Government dated 12.12.2006 granting approval of constitution of the Company Jodhpur City Transport Services Limited for the city of Jodhpur, Udaipur City Transport Services Limited for the city of Udaipur and Kota City Transport Services Limited for the city of Kota, which clearly provides that the Company will not purchase any equipments/buses nor run any

services itself. When the Company itself is neither purchasing the buses nor providing the road transport services, the Company cannot be termed to be the State Transport Undertaking as defined under sub-section (42) of Section 2 of the Act of 1988. Condition NO.4 of the order dated 12.12.2006 further provides that the Company will monitor the operationalisation of City Bus System as a regulatory body. From said Condition NO.4 it is clear that the Company undertook to monitor the operationalisation of City Bus System and that too as a regulatory body. If this condition is read with reference to the notice inviting tenders issued by the JCTS Limited dated 6.1.2007, it is clear that the Company only invited offer of interested parties to take benefit from the Company to offer better facilities to the public at large in the respective cities of latest technology in the matter of public transport. The said services will be monitored by *GPS based tracking device* with *online data transfer facility* to ascertain the service level. The Company also disclosed that the Company planed to establish a control room for *OLBTS* and the buses shall have tracking device with online data transfer facility. By this the Company will be able to know and

convey the public the estimated time of arrival and that could be flashed on display screens at various bus stops. Company will know Schedule and itinerary adherence, Log of exact kilometer travelled by bus to better manage the service. The Company by that will be improving punctually and improvement in driving pattern and will control over unauthorised and unscheduled stoppages. The Company will also try to get better analysis of migration to passenger in this system and will provide IVRS etc. The Company, therefore, sought solution from interested technology service providers on the issue for monitoring the vehicle operation through *On Line GPS* on "*Build, Own, Operate and Transfer*" basis. The notice inviting tenders dated 6.1.2007 further says that there will be two bid system, as technical bid and commercial bid. The petitioner could not draw attention of this Court to any of the provisions under the Motor Vehicles Act which requires prior permission of any authority before permit holder can provide more facility to passengers with the help of any company which may monitor his buses to improve public transport service,than the existing permit holder are giving to passengers travelling on

different routes using public transport system. This is like, an operator decides to inform the passenger about the time by which the bus is likely to reach on particular bus stop or he will provide a bus which is more safe, has better driving controls, more clean, has more visibility to drivers and passengers. Can one object to it ? Certainly not. Then the Company is also providing only better facilities to public by taking commitment from the bus operators who may like to operate better buses than others. Then how the petitioners, who are competitors, can object to Company's providing these benefits to public ?

It is clear that the complete management and its procedure have been disclosed by the Company and in the preamble, in the Form inviting expression of interest and offer to Jodhpur City Transport Service Limited, the Company stated that the Company has been incorporated to operate and manage the public transport system with private sector participation in Jodhpur City. The Company is incorporated under the Companies Act, 1956. The Company shall be under the Chairmanship Collector of the Municipal Corporation/Council of the respective area. The Management of the

Company is entrusted with the Board of Directors and there are seven members on Board of Directors with Collector of the District as its Executive Director who shall be entitled to exercise all powers for effective management of the proposed transport system under the public private partnership model. The local bodies and the district administration through the District Collector are responsible for providing all other facilities in relation to the public transport system like providing the roads with or without dividers, crossings, circles, the bus stands for the passengers, which only provides facilities to the not only bus operators but to the passengers also. By new system it has been decided to provide more facilities and to keep track to the buses running on the specified routes so that the public at large may be benefited. For timely running of the buses by using modern equipments, the Company is constituted under the Companies Act. The learned counsel for the petitioner also could not dispute that if a bus operator decides to provide more facilities to its passengers and for that purpose if said bus operator takes help of some other person or company, without violating any of the conditions of the permit then he can do so. For

the purpose for which the Company has been constituted by the State Government, it is clear that the entire effort of the State Government is to improve the(Bus Rapid Transport System) BRTS without involvement of the State Government itself but by involvement of the local bodies to provide buses without entering into running buses itself directly or through local bodies. Therefore, the Company issued the notice to those willing persons who can pay for the services provided by the newly constituted Company with the involvement of local body of the area and local administration of the city.

The learned counsel for the respondent-State further made it clear that the respondent-Department never intended to refuse permit to any person who may provide buses of the standard with low floor and with latest equipments fitted in the buses with system of tracking of buses and other latest gazzets. In that view of the matter, the apprehension of the petitioners that the Company has been constituted for providing the transport services itself is negatived by the State as well as by the document placed on record by the petitioner themselves. The petitioners did not point out any

provisions of law under which the contract of providing better facilities to the passengers travelling in the stage carriages is forbidden by law. It is true that in the document of the respondent-Company referred above itself, the Company has stated that the Company has obtained permit from the Road Transport Authority for the routes in the cities but that appears to be factually wrong as neither the Company as per approval letter dated 4.11.2006 is allowed to purchase the buses nor is allowed to run the buses and further the Companies have neither applied for permit nor permit has been given to the Companies .Company shall be providing only other facilities to the bus operators who obtains the permit to ply bus on the routes in questions obtained by them in accordance with law as any other operator, the petitioners who are competitor has no right to challenge the route or the system employed.

One of the conditions in the tender form is that the operators have to install an automated GPS based vehicles tracking system as prescribed by the company at operators cost to enable the Company and operator to check deviations from schedule and itinerary and to enable the passengers to get real time information about

movement of passenger coaches. The Company also prescribed type of buses for which the Company will be providing facilities . The type of buses will be modern low floor 2 x 2, 44 seats, rear engine brand new buses with two broad doors, strap handles on guiding rails, anti skid vinyl flooring, wide glass windows, integrated grab handles on seat, pre-coated aluminum paneling, CFL lighting. The detail description also has been given. A duty has been cast upon the bus operator to maintain the bus in good condition for proper operation to avoid any inconvenience to the passengers. The above condition clearly discloses that the Company will not own the bus nor provide the passengers transport services. The facilities will be provided to the persons who can provide the modern low floor buses and the Company will be providing certain facilities to those operators. Above facts have been mentioned in some detail only because of the reason that the petitioners' first contention is that the respondent-Company is State Transport Undertaking as well as the decision of the State is against the public interest. The petitioners' case is not that such facilities or benefits to public cannot be provided either by the bus operator himself, if he can

afford, or has so many buses and afford expenditure. Nor it is the case of the petitioner that such benefits cannot be obtained by bus operator from others or from any body corporate.

It remained unexplained, when the facts, though clear from the order of the State granting approval for constitution of companies wherein it is clearly mentioned that the companies shall not own and provide buses or transport service, further made clear by the respondent and when the petitioners themselves came to know from the permits issued to Mahadev Travels and U.N. Speedways Pvt. Ltd. that the respondent companies have not even applied for the any permit to ply their own bus on the route opened by the State, why the petitioner pressed this issue that the said companies constituted by the approval of the State order are State Transport Undertakings ?

So far as the contention of the petitioners of applicability of Chapter VI is concerned, from the facts mentioned above, it is clear that no State Transport Undertaking has been constituted by the State nor the Company constituted by the State Government is State Transport Undertaking, therefore, there arises no question of

applicability of Chapter VI of the Act of 1988 or of sub-clause (c) of Rule 6.1 of the Motor Vehicles Rules, 1999. The Chapter VI is required to be followed for particular purpose which is clear from the provisions made under Chapter VI of the Act of 1988 which provides special provision relating to State Transport Undertaking. The State may form an opinion for the purpose of providing efficient, adequate, economical and properly co-ordinated road transport services then it is necessary in the public interest that the road transport service in general or in particular class of such services in relation to any area or route or portion thereof may be run and operated by the State Transport Undertaking. That operation of the buses may be to the exclusion of complete or partial of other persons. For that purpose the State Government is required to formulate a proposal regarding an scheme giving particular and the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars. That proposal is required to be published in official gazette of the State formulating the proposal and further required to be published in one news paper in regional language circulating

in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit. The sub-section (1) of Section 99 under Chapter VI of the Act of 1988 do not exclude the power of the State or right of the local bodies to take a decision for providing efficient, adequate, economical and properly co-ordinated road transport service on the route which the State decides to open after formulating the routes under Chapter V without help of State Transport Undertaking and without giving routes to State Transport Undertaking. The public is entitled to efficient, adequate, economical and properly co-ordinated road transport service, not only on the route or the area on which the State Transport Undertaking can ply their vehicles but entitled to such facilities on all routes but depending upon the various factors like, State's resources. A welfare State, a welfare administration and the Government , even if law specifically not provides, is not only entitled to but responsible for providing best available services to the public in the various matters including the public road transport services. The said powers are inherently vest in the State in its

administrative jurisdiction as of welfare State irrespective of Sections 65 or Section 67 of the Act of 1988 and are wide enough for making all arrangements for efficient, adequate, economical and properly co-ordinated road transport services to the public, may it be a route opened under Chapter V or may be an area or route under the Chapter VI. Requirement of any notification under Section 67 only for the purposes limited by the Section 67 and the Rules framed for any purpose as under Section 65 of the Act of 1988. The choice is of the State to decide whether it should be a route available only to State Transport Undertaking or it be given to all operators. The petitioners cannot compel the State to open route under Chapter V or declare the area and route in Chapter VI. The State, therefore, has rightly opened the route under Chapter V of the Act of 1988 so that basic change made by enacting the Act of 1988 liberalising road transport law can be made effective and with the involvement of public with local administration best public transport facility may be provided to public at large without financial burden upon the State exchequer.

Apart from the power under Section 67 of the Act of 1988,

the State as well as local bodies owe duties towards the public to take timely decisions for developing the infrastructure for road transport system irrespective of any provision in the Motor Vehicles Act because of the reason that the local bodies are duty bound to provide better roads, better pavements, better road crossing and circles and the facilities to the persons who are taking the advantages of road transport services. The local bodies need no approval of any authority appointed under the Motor Vehicles Act for improving the road qualities, in widening the roads, in building the structure for persons who can wait for the better transport system buses. No permission is required for what facilities can be provided by the local bodies or the State Administration to the public in waiting for buses to come to pick them. The Constitution of the Company with clear object of improving the better transport system as a whole in the city of Jodhpur, Kota and Udaipur cannot be doubted because of clear reason that the aim and object of constitution of Companies clearly reveal that they have been constituted to improve the facilities to the public and not to create any monopoly by obtaining the road transport permits for the

Company itself or deny the permit to other competitors who also can provide the same facilities. The reasonable restriction in trade cannot be termed to be creation of monopoly. The laying down certain norms for doing the business also is not total prohibitory or even partial prohibitory unless it is shown that the conditions have been imposed to exclude all or have been imposed so that only one can get the benefit of trade. In this case, in view of the statement of the State that any one who has the buses of standard with modern equipments and facilities and fulfill other requirements of BRTS, may apply for the permit to ply his bus on the road, the apprehension of the petitioners that the State is creating monopoly on the routes in favour of the Company deserves to be rejected. At the cost of repetition it may be observed that the petitioners' contention in the writ petition was that monopoly is being created for the respondent-Company, whereas factually that contention was without foundation. Otherwise also, it is not a case of creating any monopoly in favour of any body and the petitioners, if want to take benefit of plying their buses on the routes opened by the States under Chapter V then they should compete not only for trade but

also for quality. That will be in the interest of public and in view of the judgment delivered by the Hon'ble Supreme Court in the case of Mithilesh Garg (supra), the aim and object of policy of liberalisation in the matter of road transport can be achieved by seeing that the public gets the benefit of best services through best buses and with best information to the public travelling in the buses. The policy of liberalization in furtherance of which the entire Motor Vehicles Act, 1988 has been amended radically is not only to see that the trade and the operator earn more, the object is that by competition, ultimately the services be improved and those who cannot provide better services, will be excluded by the public by not opting for their transport services. *The out dated are to give way to updates.* With the phased deployment of modern buses, the old operators will get opportunity to shift in new technology so that gradually they may shift instead of sudden burden of change.

Much has been said about the public interest by the petitioner. The petitioners put their labour to collect the details about the road width and the size of some of the road crossing and also width of road turns. The petitioners' contention is that such

huge buses can create havoc for the public and may cause serious accidents. Admittedly, the buses on the routes opened are running since April, 2007 and almost four months' have passed. No incident has been reported by the petitioners causing any accident or even traffic-jam. At this juncture it is relevant that the petitioners have not disclosed that though the petitioners may have small buses still the High Court left with no option but to issue several directions which substantially because of the reason that the small buses because of their size are run with high speed. Because of the reason of several accidents caused by these buses in the city area, I may refer the order dated 21.11.2000 of the Division Bench of this High Court delivered in the case of Mahendra Lodha v. State of Rajasthan (D.B.Civil Writ Petition No.6073/1993). New buses because of their size, will not be run in high speed and they will be under regular surveillance.

Be it as it may be, from the chart submitted by the petitioners themselves it is clear that according to the petitioners themselves, there are some places where road width is less or there may be difficulty in turning the buses on crossing or on turn of road

but the petitioners ignored this important aspect of the matter that by these buses, large number of public will be benefited and the persons at some places only may have some inconvenience. Because of some inconvenience to some persons at some places in the entire city, the rest of the public cannot be denied the modern transport system. The some of the persons will have to sacrifice their some convenience for the convenience of the larger section of the public and for betterment of the city itself. The learned counsel Shri N.M. Lodha frankly admitted that at some places if there is less road width then for that appropriate decision can be taken in time. If there are some small places with less width on road then on this ground alone, the entire scheme cannot be discarded and the people of the city cannot be denied the best facilities of transport system. It is also submitted that the experts have opined that the buses which are employed on these routes, will cause less road accidents and against this neither there is contention of the petitioners nor there is any expert report, then the report which was accepted by the Central Government, the Union of India about the feasibility of modern buses, cannot be questioned on the basis

of some facts about part of the route.

This court is convinced that the road transport system implemented by opening new routes for running the latest and modern buses with latest facilities and tracking system is in public interest and the system is required to be encouraged. It is expected that whenever any grievance will be raised because of less width of the road or turn of the road etc, then the administration will try to find out proper solution by widening the road if possible and if it is not possible then by controlling the traffic on those spots.

The contention of the petitioners that vehicles employed by the respondents-permit holders is having more weight than 7500 kgs. and is not a light motor vehicle as define under sub-section (21) of Section 2 of the Act of 1988, ignored sub-section (17) of Section 2 of the Act of 1988 which says “heavy passenger motor vehicle” means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kgs. The learned counsel Shri B.L. Maheshwari rightly pointed out that the light motor vehicle as defined in sub-section

(21) of Section 2, provides that the vehicle should not exceed 7500 kgs. whereas the heavy passenger motor vehicles are required to have unladen weight exceeding 12,000 kgs. The private transport buses in the present case is heavy passenger motor vehicles and there is no prohibition against the grant of permit to respondents under the provisions of the Motor Vehicles Act. In view of the above reasons, the argument advanced by the learned counsel for the petitioners has no relevance to the facts of the present case.

It will be better to look into the statement of objects and reasons to amending Act No.54 of 1994. As per the said amending Act of 1994, it appears that despite enacting the Motor Vehicles Act, 1988 (Act No.59 of 1988), making radical change in the matter of public transport policy, the Central Government received representations and suggestions from the State Government, transport operators and members of public regarding the inconvenience faced by them because of the operation of some of the provisions of the 1988 Act. A Review Committee was constituted by the Government in March, 1990 to examine and review the 1988 Act. The recommendations of the Review Committee were

forwarded to the State Governments for comments and they generally agree with these recommendations. The Government also considered a large number of representations received after finalization of the Report of the Review Committee, from the transport operators and public for making amendments in the Act. The draft of the proposals based on the recommendations of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views in the matter. The Transport Development Council took into account the fact; "the introduction of newer type of vehicles and fast increasing number of both commercial and personal vehicles in the country" and the proposed Bill to provide for the many other things along with "modification and simplification of certain definitions of new type of vehicles, certain exemptions for vehicles running on non-polluting fuels." Even before that, before enacting the Act of 1988, the Government has accepted the need for increasing adoption of higher technology in automotive sector and need for effective ways of tracking down traffic offenders. The Hon'ble Supreme Court as back as in the year 1991 in the case of Mithilesh

Garg etc. etc. vs. Union of India and ors etc. etc.(AIR 1992 SC 443) observed that "more often one finds a bus which has noisy engine, old upholstery, uncomfortable seats and continuous emission of black-smoke from the exhaust pipe. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter-public to board the vehicle of their choice and patronise the operator who is providing the ***best*** service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favoritism in the process of granting permits." The Hon'ble Supreme Court rejected the contention that too many operators on a route are likely to affect adversely affecting the public interest of weaker section of the profession (obviously who are engaged in to operate buses). Hon'ble Supreme Court thereafter held that " the transport business is bound to be ironed-out ultimately by the rationale of demand and supply" and thereafter held that "*in any case the transport system in a state is meant for the benefit and convenience of the public.*" The petitioners, who are already engaged in the same business want to keep the entry of new technology buses out of it. The Hon'ble Apex Court deprecated

the effort of the petitioners who are already in the business and want to keep the fresh entrants out of it on the ground that it will eliminate the healthy competition which is necessary to bring efficiency in the trade. That was one aspect of the matter because at that time, there may not have been much advanced technology fitted buses in the public transport vehicles available in India but after world globalization, the competition is not only required among the operators having the same quality of buses but required to be between the old buses and new buses with latest facilities. In this view also, the efforts of the State to provide better public facility should have been appreciated by the petitioners while examining the aspect of the public interest in contrast to alleged inconveniences at some places to some of the persons only and those persons as such has no grievances. The petitioners competitor in trade cannot become spokesman of those persons for whose alleged inconvenience a ground of public interest has been raised by the petitioners.

Another objection of the petitioners is with respect to the approval of the State Government for appointment of the Regional

Transport Officers as Director in the respondent-Companies. Though the petitioners have raised this objection but for the reasons best known to them, did not challenge the appointment of the Regional Transport Officers as Directors in the Companies or their continuation on the post of Regional Transport Officer. It appears that even after filing of the writ petition and remaining it pending, the petitioners did not choose to amend the writ petition to challenge the appointment of the respondents as Director of the Companies and his continuation on the post of Regional Transport Officer and obvious reason may be that the petitioners themselves might be satisfied that the presence of the Regional Transport Officer in the Companies may affect only his decision in the matter of grant of permit because the Regional Transport Officer may have liking for the respondent-companies only, but without the Regional Transport Officer having financial interest from the Companies or any transporter. Therefore, the petitioners specifically sought relief that since the Regional Transport Officer is Director in the Companies in questions, therefore, no permit be granted in favour of the Companies by the transport authorities. The relief became

unnecessary because of the reason that the Companies are not intending to obtain the permit from State Transport Department and that was already clear but has been made specifically clear by the respondents before this Court. Faced with this situation, learned counsel Shri Joshi in arguments, challenged the Regional Transport Officer's continuation as Director in the Company but for that the present Directors themselves are not party and looking to totality of fact and change in law of State Transport by amending Motor Vehicles Act in 1988 only apprehension of the petition that the Regional Transport Officer may grant permit liberaly to operators having contract with the respondent-Companies is not of any significance. In view of the above reasons, the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioners delivered in the case of Ishwar Singh Bagga and others v. State of Rajasthan (AIR 1987 SC 628) and the judgment of the Karnataka High Court delivered in the case of K.R. Bhaskarnanda and etc. etc. v. State of Karnataka and others (AIR 1990 Karnataka 182) and the judgment of the Hon'ble Supreme Court delivered in the case of The Mor Modern Co-operative Transport Society Ltd. Vs.

Financial Commissioner and Secretary to Govt. Haryana and another (AIR 2002 SC 2513) have no relevance to the facts of this case.

The petitioners' apprehension that in view of the fact that the Regional Transport Officer is Director in the Companies, therefore, the Regional Transport Officer may be liberal in taking decision in favour of the respondent-Companies but how that can be relevant in view of the total change made in the Motor Vehicles Act, 1988 in the matter of grant of permit and as noticed by the Hon'ble the Supreme Court in the case of Mithilesh Garg (supra) wherein it has been clearly held that the procedure for grant of permit under the new Act has been liberalized to such an extent that an intended operator can get a permit for asking irrespective of number of operators already in the field. In view of the above reason, the contention of the petitioners about the likely bias of the Regional Transport Officer is rejected.

The learned counsel for the petitioners also relied upon the judgment of the Hon'ble Supreme Court delivered in the case of State of Uttar Pradesh v.Singhara Singh and ors (AIR 1964 SC 358), State of Uttar Pradesh v. Singhara Singh and ors (AIR 1964 SC 358),

Haresh Dayaram Thakur vs. State of Maharashtra and ors. (2000 WLC (SC) Civil 2000) and the judgment of this Court delivered in the case of Laxman Das v. Deoji Mal & ors. (2002(4) WLC(Raj.) 297) in support of his contention that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. In the present controversy,it is clear that sep the separate powers have been given to the State Government under Chapter V and Chapter VI for opening of the route, scheme and route in scheme. When separate powers are given by statute then the authorities may take a decision as per requirement and proceed in the matter and there is little scope for others to challenge the decision of the State in the matter of its choice. The State has power to decide to open a route available for all operators under Chapter V and could have decided to prepare an scheme and declare a route to exclude private operators under Chapter VI of the Act of 1988. The petitioners cannot compel the State Government to take a decision under Chapter VI only or under Chapter V only. It has been made clear that the State Government

itself decided not to open route as monopoly route under Chapter VI of the Act of 1988 and the State Government has power to open the route for all under Chapter V then the State has followed the procedure as prescribed by law under Chapter V for opening the routes.

The contention of the petitioners that BRTS is an scheme, ignoring the basic fact that the requirement of scheme which can be framed under Section 99 of the Act of 1988, is not prescribing the quality of bus alone. The contract of providing services by the Companies constituted by the State and established by the local bodies is a contract between permit holders and the Comapnies and are not contract with the State or Transport Authority. There are several factors which can be considered by the State Government and upon finding reasons for framing an scheme, the State Government may frame scheme but the State Government is not precluded from making the arrangements for better public transport vehicles on the routes available under Chapter V. In view of the above reasons, the judgments relief upon by the learned counsel for the petitioners have no application as the State

Government has power to declare and open routes in question.

One more judgment relied upon by the learned counsel for the petitioners was delivered in the case of Brij Mohan Parihar v. M.P. State Road Transport Corporation and ors (AIR 1987 SC 29). In that case, an agreement was entered into by the petitioner unemployed graduates with the Corporation so that the unemployed graduates may ply their buses as a nominee of the State Road Transport Corporation on the route in respect of which the permit was issued in favour of the Corporation. Here in this case, no permit has been issued in favour of any State Road Transport Corporation or in favour of the respondent-Companies, therefore, there arise no question of any agreement or hidden agreement between the companies and the operator to obtain the permit from the Transport Department to run the BRTS buses. At the cost of repetition, it is stated that the Companies are only providing their services and not road transport services nor they have sub-let or gave licence to ply the buses on the basis of any permit issued in their favour.

In addition to above, it is clear from the statement of the

learned counsel for the petitioners also that the petitioner and petitioners' members did not apply for the grant of permit for the routes opened by the State Government by its order dated 4.11.2006 nor they are intending to apply for permit for these routes. Therefore, there is no order of rejection of their applications for grant of permit by the competent authority. Hon'ble the Supreme Court in Katakis vs. Union of India (W.P. No. 54/68 dated 28.10.1968) (referred in Novartis AG vs. Union of India in W.P. Nos. 24759/2006 and 24760/2006 dated 6.8.2007) held as under:-

> **"The Supreme Court in appropriate circumstances can give a declaration that a particular order or scheme violates the provisions of the constitution but the Supreme Court will not give such a declaration unless it is certain that the declaration will serve some useful purpose to the petitioners."**

In view of this legal position also, the petitioners are not entitled for any declaration as sought by the petitioners in the writ petitions.

However, since all the learned counsel for the parties argued at length on the question of public transport facilities available at present and about the proposed aim of the State Government by improving the public transport facilities, therefore, without going in detail, this Court may observe that it is right time for the State Government to take timely decisions to improve the road transport facilities to the people of the State of Rajasthan as a whole, may it be in phased manner and for that purpose, may consider to implement the Bus Rapid Transport System in other cities also and may also provide facilities for C.N.G. vehicles which has already been implemented in Delhi.

In view of the above reasons, all the writ petitions are dismissed on merit instead of recording any finding on preliminary objections raised by the learned counsel for the respondent-State.

` **(PRAKASH TATIA),J.**

mlt.